

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JORGE CAMACHO,
Plaintiff,
v.
R. RACKLEY,
Defendant.

Case No. [17-cv-05168-JSC](#)

ORDER TO SHOW CAUSE

INTRODUCTION

Petitioner, a prisoner of the State of California proceeding pro se, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging his conviction and sentence.¹ Because the petition states cognizable grounds for federal habeas relief, a response from Respondent is warranted.

BACKGROUND

In 2011, Petitioner was convicted by a jury of three counts of first-degree murder under special circumstances, conspiracy to commit murder, and participation in a street gang. The jury also found allegations supporting sentence enhancements for gun use and gang affiliation to be true. The trial court sentenced Petitioner to two consecutive terms of life in prison without the possibility of parole, plus a term of 95 years to life in prison. The California Court of Appeal

¹ Petitioner has consented to the jurisdiction of a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). (ECF No. 5 at 52.)

1 directed the trial court to vacate the gang enhancements on two counts, but otherwise affirmed the
2 judgment. In 2016, the California Supreme Court denied review. Petitioner then filed the instant
3 federal petition.

4 DISCUSSION

5 I. Standard of Review

6 This Court may entertain a petition for a writ of habeas corpus “in behalf of a person in
7 custody pursuant to the judgment of a State court only on the ground that he is in custody in
8 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). It
9 shall “award the writ or issue an order directing the respondent to show cause why the writ should
10 not be granted, unless it appears from the application that the applicant or person detained is not
11 entitled thereto.” *Id.* § 2243.
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13 II. Legal Claims

14 Petitioner raises the following claims: (1) his right to due process was violated because one
15 of the counts of murder rested on a theory of vicarious liability not permitted under California law;
16 (2) his convictions for one of the murders, for conspiracy to commit murder, and for participation
17 in a street gang violated his right to due process because they were based on uncorroborated
18 testimony of co-conspirators; (3) his convictions for one of the murders violated his right to due
19 process because there was insufficient evidence that the murder was committed in furtherance of
20 or as a reasonable and probable consequence of the conspiracy; (4) the trial court violated his right
21 to due process by admitting testimony about his participation in gang crimes; (5) the trial court
22 violated his right to due process by allowing the jury to use his prior arrest on gun charges to
23 convict him of conspiracy; (6) admission of his statement to a jail officer violated his privilege
24 against self-incrimination and his lawyer’s failure to object to the evidence violates his right to the
25 effective assistance of counsel; (7) instructions to the jury not to speculate why accomplices were
26 not being prosecuted violated his rights to confrontation and due process; (8) prosecutorial
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misconduct violated his right to due process; and (9) his sentence violated his right to be free from cruel and unusual punishment. These claims, when liberally construed, raise cognizable grounds for relief.

CONCLUSION

For the foregoing reasons and for good cause shown,

1. The Clerk shall serve a Magistrate Judge jurisdiction consent form, a copy of this Order, and the petition, and all attachments thereto, on Respondent and Respondent's attorney, the Attorney General of the State of California. The Clerk also shall serve a copy of this Order on Petitioner.

2. Respondent shall complete and file the Magistrate Judge jurisdiction consent form in accordance with the deadline provided on the form.

3. Respondent shall also file with the Court and serve on Petitioner, within **ninety-one (91) days** of the date this Order is issued, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition. If Petitioner wishes to respond to the answer, he shall do so by filing a traverse (a reply) with the Court and serving it on Respondent within **twenty-eight (28) days** of the date the answer is filed.

4. Respondent may, within **ninety-one (91) days** of the date this Order is issued, file a motion to dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court and serve on Respondent an opposition or statement of non-opposition within **twenty-eight (28) days** of the date the motion is filed, and Respondent

1 shall file with the Court and serve on Petitioner a reply within **fourteen (14)** days of the date any
2 opposition is filed.

3 5. It is Petitioner's responsibility to prosecute this case. Petitioner must keep the Court
4 informed of any change of address by filing a separate paper captioned "Notice of Change of
5 Address." He must comply with the Court's orders in a timely fashion. Failure to do so may
6 result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil
7 Procedure 41(b).
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9 **IT IS SO ORDERED.**

10 Dated: October 23, 2017

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13 JACQUELINE SCOTT CORLEY
14 United States Magistrate Judge
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CERTIFICATE OF SERVICE


I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 23, 2017, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Jorge Camacho ID: #AH7931
Folsom State Prison/ 4-A3-07
P.O. Box 715071
Represa, CA 95671

Dated: October 23, 2017

Susan Y. Soong
Clerk, United States District Court

By: 
Ada Means, Deputy Clerk to the
Honorable JACQUELINE SCOTT CORLEY